

In re: MIKE GOCHNAUER.
AWA Docket No. 01-0008.
Decision and Order.
Filed July 30, 2001.
Amended Order filed September 10, 2001.

AWA - APHIS - General denial - Preponderance of evidence - Veterinary care - Veterinary care, program of - Identification of animals - Housekeeping - Floor space, minimum - Exposure to elements - Emergency care - Harassment, threats - Employees, adequate - Suspension - Penalty.

Respondent held a class "A" license from APHIS for breeding and sale of dogs in La Plata, Missouri. Respondent was cited for 30 separate violations of the Animal Welfare Act (Act). (7 U.S.C. § 2130 *et seq.*) Inspections were performed by APHIS inspectors on seven occasions: May 7, 1998; June 18, 1998; September 8, 1998; July 27, 1999; November 9, 1999; June 22, 2000; and August 15, 2000. A Complaint was filed by APHIS on November 4, 2000. There was adverse publicity in local newspaper concerning Respondent. There were alleged threatening phone calls to APHIS officials from persons said to be "associated" with Respondent. There were alleged incidences of emotional unpredictability of Respondent. Respondent appeared at the hearing and generally denied the elements of the Complaint, but did not present direct evidence negating the allegations of the Complaint. The Complainant has the burden of proof and the burden of going forward to make a prima facie case. The Administrative Law Judge (ALJ), found that the Respondent was in violation of the regulations and standards of the Act, to wit: (a) failure to maintain structurally sound enclosures/facilities in good repair; (b) failure to keep the premises free of trash, etc. to protect the animals from injury and to facilitate the required husbandry practices; (c) failure to keep food receptacles clean and sanitized; (d) failure to keep the premises free from storage of non-cleaning materials in kennel area; (e) failure to maintain proper waste and water disposal; (f) failure to provide the animals with proper protection from the elements; (h) failure to provide proper construction with impervious materials; (i) failure to maintain enclosures without injurious projections; (j) failure to provide sufficient living space for the animals; (k) failure to provide proper (kennel area) sanitation; (l) failure to make the facility available for inspection by APHIS inspectors during normal business hours; (m) failure to maintain programs to prevent disease; (n) failure to provide program of disease control and prevention under supervision of a veterinarian; and (o) failure to maintain proper identification of animals. The ALJ found that Respondent did not violate the regulations regarding: failure to provide veterinary care to his animals; did not harass or threaten any APHIS inspectors. The ALJ determined that Respondent's license should be suspended for a period of 12 months and pay a fine of \$5,000.

Colleen A. Carroll, for Complainant.
Sheila Gochnauer, for Respondent.

Decision and Order and Amended Order issued by James W. Hunt, Administrative Law Judge.

This disciplinary proceeding was instituted by a complaint filed on October 24, 2000, by the Administrator, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture. The complaint was amended on December 1, 2000 (references hereafter to the "complaint" include the amendment). The complaint alleges that Respondent was a licensed dealer under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) ("Act") and that he violated the Act and the regulations and standards promulgated pursuant

to the Act (9 C.F.R. § 1.1 *et seq.*).

A hearing was held in La Plata, Missouri, on January 17, 2001. Complainant was represented by Colleen Carroll, Esq. Respondent was represented by his daughter-in-law, Sheila Gochnauer.¹

Law

The complaint alleges that Respondent violated the following regulations and standards (9 C.F.R. § 2.100(a)):

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

§ 2.50 Time and method of identification.

(a) A class “A” dealer (breeder) shall identify all live dogs and cats on the premises as follows:

(1) All live dogs and cats held on the premises, purchased, or otherwise acquired, sold or otherwise disposed of, or removed from the premises for delivery to a research facility or exhibitor or to another dealer, or for sale, through an auction sale or to any person for use as a pet, shall be identified by an official tag of the type described in § 2.51 affixed to the animal’s neck by means of a collar made of material generally considered acceptable to pet owners as a means of identifying their pet dogs or cats, or shall be identified by a distinctive and legible tattoo marking acceptable to and approved by the

¹ The Rules of Practice permit a party to appear in person or by an “attorney of record.” (7 C.F.R. §1.141(c)). Although Ms. Gochnauer is not a lawyer, she was permitted to represent her father-in-law as an attorney, since an “attorney,” in the broad sense, is “one who is designated to transact business for another.” *Black’s Law Dictionary*, 1999 edition.

Administrator.

§ 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

- (1) To enter its place of business;
- (2) To examine records required to be kept by the Act and the regulations in this part;
- (3) To make copies of the records;
- (4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and standards in this subchapter; and
- (5) To document, by the taking of photographs and other means, conditions and areas of noncompliance.

Subpart A - Specifications for the Humane Handling, Care, Treatment and Transportation of Dogs and Cats

FACILITIES AND OPERATING STANDARDS

§ 3.1 Housing facilities, general.

(a) *Structure*; construction. Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

(b) *Condition and site*. Housing facilities and areas used for storing animal food or bedding must be free of any accumulation of trash, waste material, junk, weeds, and other discarded materials. Animal areas inside of housing facilities must be kept neat and free of clutter, including equipment, furniture, and stored material, but may contain materials actually used and necessary for cleaning the area, and fixtures or equipment necessary for proper husbandry practices and research needs. Housing facilities other than those maintained by research facilities and Federal research facilities must be physically separated from any other business. If a housing facility is located on the same premises as another business, it must be physically separated from the other business so that animals the size of dogs, skunks, and raccoons are prevented from entering it.

(c) *Surfaces - (1) General requirements*. The surfaces of housing facilities - including houses, dens, and other furniture-type fixtures and objects within the facility - must be constructed in a manner and made of materials that

allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

- (i) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and
- (ii) Be free of jagged edges or sharp points that might injure the animals.

. . . .

(f) *Drainage and waste disposal.* Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

§ 3.4 Outdoor housing facilities.

. . . .

(b) *Shelter from the elements.* Outdoor facilities for dogs or cats must include one or more shelter structures that are accessible to each animal in each outdoor facility, and that are large enough to allow each animal in the shelter structure to sit, stand, and lie in a normal manner, and to turn about freely. In addition to the shelter structures, one or more separate outside areas of shade must be provided, large enough to contain all the animals at one time and protect them from the direct rays of the sun. Shelters in outdoor facilities for dogs and cats must contain a roof, four sides, and a

floor, and must:

- (1) Provide the dogs and cats with adequate protection and shelter from the cold and heat;
- (2) Provide the dogs and cats with protection from the direct rays of the sun and the direct effect of wind, rain, or snow;
- (3) Be provided with a wind break and rain break at the entrance; and
- (4) Contain clean, dry, bedding material if the ambient temperature is below 50°F (10°C). Additional clean, dry bedding is required when the temperature is 35°F (1.7°C) or lower.

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities - including houses, dens, etc. - that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

§ 3.6 Primary enclosures.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) *General requirements.*

- (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosures must be kept in good repair.
- (2) Primary enclosures must be constructed and maintained so that they:
 - (i) Have no sharp points or edges that could injure the dogs and cats;
 - (ii) Protect the dogs and cats from injury;
 - (iii) Contain the dogs and cats securely;

. . . .

- (x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor.

. . . .

- (xii) Primary enclosures constructed on or after February 20, 1998, and floors replaced on or after that date, must comply with the requirements in

this paragraph (a)(2). On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a)(2). If the suspended floor of a primary enclosure is constructed of metal strands, the strands must either be greater than $\frac{1}{8}$ of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports.

. . . .

(c) Additional requirements for dogs-

(1) *Space.* (i) Each dog housed in a primary enclosure (including weaned puppies) must be provided a minimum amount of floor space, calculated as follows: Find the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; then divide the product by 144. The calculation is: (length of dog in inches + 6") x (length of dog in inches + 6") = required floor space in square inches. Required floor space in inches/144 = required floor space in square feet.

. . . .

§ 3.9 Feeding.

. . . .

(b) Food receptacles must be used for dogs and cats, must be readily accessible to all dogs and cats, and must be located so as to minimize contamination by excreta and pests, and be protected from rain and snow. Feeding pans must either be made of a durable material that can be easily cleaned and sanitized or be disposable. If the food receptacles are not disposable, they must be kept clean and must be sanitized in accordance with § 3.11(b)(3) of this subpart. If the food receptacles are disposable, they must be discarded after one use. Self-feeders may be used for the feeding of dry food. If self-feeders are used, they must be kept clean and must be sanitized in accordance with § 3.11(b) of this subpart. Measures must be taken that there is no molding, deterioration, and caking of feed.

§ 3.11 Cleaning, sanitization, house-keeping, and pest control.

(a) *Cleaning of primary enclosures.* Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food

waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, upset, or distressed in the process. Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with mesh or slatted floors must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards pests, insects and odors.

. . . .

(2) Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

. . . .

(c) *Housekeeping for premises.* Premises where housing facilities are located, including buildings and surrounding grounds, must be kept clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required in this subpart, and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. Premises must be kept free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and pest control, and to protect the health and well-being of the animals.

. . . .

§ 3.12 Employees.

Each person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry and care, or handle animals, must be supervised by an individual who has the knowledge, background, and

experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

Facts

Respondent, Mike Gochnauer, a dog breeder for sixteen years, has held a class "A" license from APHIS since 1993 to breed and sell dogs. He was licensed before that by the State of Missouri. He testified that he was raised on a farm and has "always had dogs." (Tr. 277.) He lives alone near the breeding facility at 33295 Mesquite Street, La Plata, Missouri 63549. The dogs are kept in cages in a trailer and in hutches. The number of animals at the kennel have ranged from 94 adult dogs and 43 pups in June 1999 to 111 adults and 98 pups in June 2000. He has less animals now.

The record in this case begins with a report of an APHIS inspection on May 7, 1998. (CX 2.) The report indicates that Respondent had been inspected on prior occasions but the reports for those inspections were not made a part of the record. The APHIS inspector, Harold Becker, wrote on the inspection report that he identified the following items as not in compliance with the standards:

The 1st red hutch housing mixed breed dogs has a dog box in pen that is in need of repair. Top board has been chewed in half. Correct by 8 May 98 . . . Red hutch cage facing west housing beagles has hole in floor of dog box. This needs to be repaired or replaced. Correct by 5 May 98.

. . . .

The area in and around kennel has an excessive amount of wash where manure is washed from under cages into the walking area due to excessive rain. This is creating a very strong odor in the area. Some type of system needs to be set up to eliminate this problem. Correct by: 30 Jun 98.

. . . .

On back side of trailer under the cages there is a large pool of standing liquid manure and urine which is there due to excessive moisture in this area this winter. Some type of system needs to be set up to drain this sewage away.

. . . .

Hutch type cage facing west is housing 4 beagles, does not allow each animal proper space to lay in a comfortable position. Also pen close to

lagoon is housing 8 mixed breed half grown pups this pen is too small for the amount of animals in pen. Correct by: 8 May 98

Becker also stated in his report that broken wire in one pen that had been identified in a previous inspection had not been repaired. However, he also said that five non-compliant items that had been identified at a previous inspection had been corrected. This included replacing fiberglass walls and an entry door, removing animals from pens with inadequate space, improvement in animals with skin problems, and cleaning of cages.

The complaint alleges that the non-compliant items identified by Becker constitute violations of Sections 3.1(a) and (f), 3.6(c)(1), and 3.6(a)(2)(i)(ii) of the standards. Respondent denied generally in his answer to the complaint that he violated the standards but did not present evidence at the hearing specifically denying the non-compliant items identified by Becker. Nevertheless, Complainant has the burden of proving violations by a preponderance of the evidence. Becker's identification of the repairs needed to the hutch, the need for adequate drainage for water and sewage, and the failure to repair broken wire establish violations of Sections 3.1(a) and (f) and 3.6(a)(2)(i)(ii) of the standards. However, Becker did not provide any of the measurements, which are specified in the standards, to support his estimate that the animals lacked adequate space. Complainant therefore did not prove a violation of section 3.6(c)(1).

Becker conducted another inspection on June 18, 1998. (CX 3.) He found that Respondent had repaired the hutches, fixed the broken wire, and provided the animals with more space. However, he found no improvement in the drainage:

Area in and around kennel has an excessive amount of wash where manure is washed from under cages into the walking due to excessive amount of rain. This is creating a very strong odor in and around kennel area. Correct by: 30 Jun 98

On back side of trailer under cages large pool of standing liquid manure and urine which is there due to excessive moisture this winter and summer, some type of system needs to be set up to give proper drainage. Correct by: 30 Jun 98.

The complaint alleges, and I find, that this continuing drainage problem was a violation of section 3.1(f) of the standards.

At Becker's next inspection, and apparently his last, on September 8, 1998, he stated in the report that the drainage problem had been corrected by a trench being "placed around the trailer to prevent water from standing." However, he also found that Respondent had failed to keep the facility clean by storing wood,

cleaning materials, and an old picture on top of the cages. (CX 4.) Section 3.1(b) allows cleaning materials to be stored in the animal area, but not other materials. I find that the storage of non-cleaning materials in the kennel constitutes a violation of sections 3.1(b) and 3.11(c) of the housekeeping standard. Becker did not cite Respondent for any other non-compliant items.

Sometime about this time Becker resigned as an inspector. (Tr. 15.) Another APHIS inspector, Jim Gauthier, and an APHIS veterinary medical officer, John Slauter, attempted to conduct an inspection of the kennel on April 15, 1999. (CX 5.) No one was present. Respondent testified that he has never avoided an inspection (Tr. 271.) and in an April 19, 2001 letter he said he is usually the only one at the kennel and that he has to be away at times to deliver dogs or pick up supplies. However, a dealer must have someone available at its facility at all times during business hours to allow unannounced APHIS inspections. *S.S. Farm Linn County, Inc. et al.* 50 Agric. Dec. 476, 492 (1991). Thus, regardless of Respondent's reasons for not being present, his failure to allow APHIS to conduct an inspection is, as alleged in the complaint, a violation of section 2.126 of the regulations.

The next inspection was conducted on July 27, 1999, when Gauthier was accompanied by his supervisor, Daniel Jones, a veterinary medical officer. Dr. Jones testified that he had reviewed the previous inspection reports, presumably those prepared by Becker (since they are the only prior reports in the record), and determined that Respondent "continued to be out of compliance with maintenance and cleaning and structure of the facility." (Tr. 18.) However, the only non-compliance reported at the prior inspection (September 1998) had related to a relatively minor housekeeping matter. In any event Dr. Jones said he discussed the matter with Gauthier, who had replaced Becker, and decided that they "needed to take some kind of action and it is not unusual for the inspector to ask their supervisor to accompany them for a visit, to see if -- to see with the supervisor's own eyes what the problem is, and perhaps even intervene and speak to the licensee, to see if something -- to stress the importance of being in compliance. And it was decided that this was one of the kennels that Mr. Gauthier wanted myself to accompany him with." (Tr. 35.)

Dr. Jones said the area around the facility was "heavily vegetated." (Tr. 39.) (It was reported on another occasion that the weeds were so high one could not see Respondent's house (Tr. 70)). Jones said that fifteen or more dogs --the inspection report says twenty-- were running loose and did not have any identification. He said that he assumed they were breeding dogs which should have been contained. (CX 6; Tr. 36, 39, 42-43.) Respondent testified that the loose dogs, one of which bit an inspector, were "house" dogs, "hound" dogs, three breeding dogs that he had allowed out of their cages to get exercise, and dogs too old for breeding. He said he never destroys a dog just because it's past its breeding age because it's his pet and has "paid for its retirement." (Tr. 276.)

Dr. Jones said that, though not in the regulations, APHIS assumes that more than six loose dogs are not pets but are breeding dogs that must be contained. (Tr. 42-43, 54, 59.) Respondent was cited for not keeping the breeding dogs confined (section 3.6(a)(2)(iii)) and for not providing them with proper identification (section 2.50). (CX 6.) Respondent's failure to provide proper identification for the three breeding dogs was a violation of section 2.50 of the regulations. However, while the standards regulate enclosures and require accessible outdoor shelters, the standards do not provide that dogs must be confined to their enclosures but only that if they are confined the enclosure must be secure. Respondent therefore did not violate section 3.6(a)(2)(iii) of the standards by allowing the animals out of their enclosures to exercise.

In his report Gauthier made the finding that:

Mr. Gochnauer stated that his veterinarian had not visited site. Attending vet must visit site at least once per year. All dogs appear to have fleas and skin irritation that must be treated. Outdated drugs were also found. These must be removed. There is no written program of vet care.

Dr. Jones testified that Respondent had not routinely consulted a veterinarian but that he did not see any dogs with medical problems. (Tr. 47-49.) Respondent testified that he has a veterinarian who treats his dogs for afflictions he cannot handle. (Tr. 331.) On another occasion an inspector found that Respondent had a veterinarian but that he had the impression that Respondent believed he could handle his own veterinary care. (Tr. 71-72). However, Respondent did not say whether he had a written program of veterinary care.

The complaint alleges that Respondent failed to maintain a program of veterinary care and failed to provide veterinary care to animals in need of such care in violation of section 2.40 of the regulations. Respondent's failure to have a program of veterinary care was a violation of section 2.40, but Complainant did not show by a preponderance of the evidence that Respondent did not provide veterinary care for its animals. The report indicates that the flea problem required a veterinarian's attention. However, Dr. Jones said he did not see any dogs with medical problems. (Tr. 47-49.) It is not established that Respondent failed to provide veterinary care to his animals in violation of section 2.40 of the standards.

Another alleged non-compliant item cited in the report related to the housekeeping standards (Section 3.1(b) and 3.11(c)):

Inside of trailer still has cleaning material that is not stored properly. Also inside of trailer is dirty, with dirt, dust and unrelated items that must be stored properly. Fifty dogs involved.

Note: This is a notice that you had the same violation(s) documented on

the last two inspections. You are being given the opportunity to correct these violations. If similar violations are documented on other inspections, all past and future violations may be used as evidence for legal actions against you.

Respondent, however, had been cited only at one prior inspection for not complying with the housekeeping standard (on September 8, 1998) and it was a relatively minor incident. As for the non-compliance with this standard in July 1999, Dr. Jones testified:

There was material there that was both on the floor and on top of cages that were trash. There was medical -- medicines and antibiotics bottles that were just strewn out, not kept in its proper place. There was rat poison on top of one of the cages, and there was some cleaning material, such as -- oh, I believe -- I'm not sure what is was, but it would be maybe Clorox or something of this sort, again that was just haphazardly placed here or there. Nothing was in order; things were dirty. And I noticed that the trailer was in need of repair. . . . It was in need and great -- it needed to be cleaned and maintained. It was in great -- it needed to be repaired. (Tr. 37-38.)

Although Jones conceded that the rat poison container was empty and as noted before cleaning material (Clorox) may be allowed in the animal area, his testimony was otherwise credible concerning the lack of required housekeeping. This documented lack of compliance constitutes a violation of sections 3.1(b) and 3.11(c).

Gauthier's next inspection was conducted on November 9, 1999. (CX 7.) He testified that all the non-compliant items had been corrected by Respondent, including the need for better housekeeping, but that Respondent had not provided the minimum floor space for six puppies as required by section 3.6(c)(1) of the standards. (Tr. 219.) This section provides the measurements which are to be used in calculating minimum floor space. Gauthier did not state whether he took the required measurements. (Tr. 220.) There is insufficient evidence to find that Respondent failed to comply with the minimum floor space standard. The report did not cite Respondent for any other non-compliant items.

The next inspection was conducted seven months later on June 22, 2000. (CX 8.) Gauthier said he conducted the inspection after the office had received a complaint but said he did not know the identity of the complaining person. (Tr. 222.) He was accompanied by Phil Ledbetter, an investigator with APHIS' Investigative and Enforcement Service. Ledbetter testified that he accompanied Gauthier because Respondent's facility was categorized as being in "chronic noncompliance" and that two inspectors visit such facilities because "there might be some type of action taken." (Tr. 152.) Respondent, however, had been in

compliance at the previous inspection.

Gauthier testified that at the June inspection the facility had gone “downhill” since his last inspection. (Tr. 222.) He indicated that one cause for Respondent’s housekeeping problem was that he “collects items and brings them in, and they keep getting closer to the kennel.” He advised Respondent to install a perimeter fence to keep the clutter away from the dog enclosures. (Tr. 216.) Ledbetter added that the kennel area was so cluttered with discarded material it made some enclosures “barely accessible” for inspection. (Tr. 162, 188.)

The testimony, report, and the photographs taken by Ledbetter (CX 9-20) documented the violation of sections 3.1(b) and 3.11(c) and the additional following violations: Water and waste under dog runs lacked adequate drainage, and waste in a wheelbarrow had not been disposed of (section 3.1(f)); wood surfaces in dog enclosures were not sealed to make them impervious to moisture (section 3.4(c)); bare metal wire flooring needed to be replaced with coated wire, and sagging flooring needed to be repaired (section 3.6(a)(2)(xii)); holes in walls needed repair (section 3.6(a)(1)); a dog lacked the required six inches of head space (section 3.6(c)(l)); food receptacles and water receptacles were not properly cleaned and sanitized (section 3.9(b), 3.10(b) and 3.11(b)(2)); accumulated fecal material in animal areas had not been cleaned daily (section 3.11(a)); dogs and puppies were not properly identified (section 2.50); dogs with matted hair needed their hair clipped to prevent skin irritation, and a bottle of an expired drug was found in refrigerator (section 2.40) .

The report also stated that the lack of adequate floor space, identified at the previous inspection, had not been corrected. As noted before this had not been found to be a violation due to Gauthier failing to provide cage measurements. On this inspection, however, the cage was measured (Tr. 207) and the measurements were included in the report. On this occasion, therefore, non-compliance with section 3.6(c)(l) was substantiated.

The report further found that some enclosures failed to comply with section 3.4(b) by not having four “solid walls.” This standard, however, requires four “sides,” not solid walls, to protect the animals from the elements. Ledbetter said the enclosures had three sides with one open to the weather. He said the enclosures had panels that could be put in place to protect the animals from the weather but that Respondent was not always present to put the panels in place. (Tr. 126-127, 132, 181.) Even though the report is mistaken in stating that the standards require four solid walls, there was still a violation of section 3.4(b) because the animals would be exposed to inclement weather in the event no one was present at the facility during bad weather to put the fourth side panel in place.

The next inspection took place on August 15, 2000. (CX 21.) It was a “team” inspection conducted by Gauthier, Dr. Slaughter, and Michael Ray, an investigator who, like Ledbetter, took photographs of the facility during the

inspection. (CX 22-32.) Dr. Slauter testified that a licensed veterinarian participates in team inspections of “problem facilities, facilities that have had a long history of problems, in an effort to do everything we can to bring these people into compliance.” (Tr. 69.) The report of the inspection indicates that Respondent had corrected the following non-compliant items identified at the inspection in June: accumulated junk had been removed; weeds were cut; drainage for waste and manure had been provided; six-inch head space had been provided for the dogs; and food and water receptacles had been cleaned.

However, the report found that a rusted outside door needed to be repaired or replaced. Dr. Slauter testified that the rust had corroded the metal which would prevent it from being properly cleaned and sanitized. (Tr. 92.) This constituted a violation of section 3.1(c)(1)(i).

The report stated that the following non-compliant items, which were found during the inspection and which the complaint alleges as violations, had also been identified on previous inspections:

Section 3.4(c). Bare and chewed wood was not impervious to moisture.

Section 3.4(b). Outdoor enclosures lacked four solid walls.

Section 3.6(a)(2)(xii). Two enclosures continued to have wire mesh bare wire that was less than 1/8 inch in diameter.

Section 3.6(a)(2)(i). Dog runs had broken wire and dog boxes had protruding nails.

Section 3.6(a)(2)(x). Puppies’ feet fall through wire mesh.

Section 3.1 l(a). Fecal waste and hair had accumulated on wire and in dog boxes.

Section 3.6(c)(1). Dogs lacked adequate floor space. The report cited the measurements on which this finding was based.

Section 2.50. Numerous dogs lacked proper identification.

The report stated that dogs were observed to have the following conditions that needed veterinary care: Loose stool that appeared to have blood and mucous; generalized hair loss; hair loss and skin lesions; and a bite wound that appeared to be infected. Respondent testified that he had never “lost” a dog, except for a puppy with a heart condition, and that he has a veterinarian, Dr. John Moore, to treat his dogs. He said that the dog with the wound had been bitten on Saturday and that the veterinarian was not available before the inspection which was conducted on Monday. He said he had the dogs treated by the veterinarian within a day or two after the inspection. (Tr. 330-333.)

The testimony of Drs. Slauter and Gauthier and the photographs taken by Ray substantiate the findings in the report. As alleged in the complaint, the non-compliant items found in the report constitute violations of the cited standards. As for the need for veterinary care, section 2.40 requires that animal dealers

provide appropriate “emergency, weekend, and holiday” care for their animals. (Section 2.40(b)(2).) An infected wound would obviously require a veterinarian’s attention. Respondent’s failure to provide such prompt care even on a weekend is a violation of section 2.40.

Two months later, on October 24, 2000, the instant complaint was filed and on November 4, 2000, APHIS issued a press release reporting that Respondent was charged with thirty separate violations of the Animal Welfare Act. (CX 36.) After the news release about the complaint appeared in a local newspaper, Gauthier was awakened on November 12 by a call from Respondent who complained about the news release. Gauthier said that in the course of the seven or eight minute call Respondent told him that “he wished I was dead and in hell” and told Gauthier to retract the article “or else.” He also said that Respondent remarked that if his dogs were taken he would not have anything to live for. A few days later Gauthier received a call from an anonymous caller who referred to him as an obscenity. Gauthier referred the calls to the sheriff who traced the anonymous call and found that the number belonged to a Joseph Gauthier testified that he had heard that Ross was “associated” with Respondent. He did not say in what manner the two were associated. Gauthier said that, over the years, “numerous people have threatened to have me shot, have me beat and all sorts of things,” but that these threats had not bothered him as much as the call from Respondent because he was unpredictable and had been recently fined for shooting at a person name Marshall Smith. Gauthier did not elaborate on what he meant by Respondent’s unpredictability. The testimony relating to Respondent’s demeanor was that at the last inspection Respondent had been “a little bit cranky, but, you know, that’s normal.” (Tr. 225.) Dr. Slauter testified Respondent was “very kind to us” at the inspection. (Tr. 70.) Gauthier said that because of the phone call he did not plan to conduct any more inspections of Respondent’s facility and that no one had been assigned to conduct inspections. (Tr. 232-248; RX 1.)

An amended complaint was filed on December 1, 2000, alleging that Respondent had “interfered with, threatened, verbally abused, and harassed” Gauthier in the November 12 call. The record does not contain any other incidents where Respondent allegedly harassed or threatened any inspectors.

Respondent, Michael Gochnauer, 66, has had three heart attacks and two strokes. His left arm and leg are partially paralyzed. He walks with difficulty and can use his left arm only to the extent of carrying a light bucket by curving his fingers around the handle. (Tr. 279-280.) Over the past eight years he has had run-ins with what he calls animal rights people coming to his facility. He said he has intentionally let weeds grow tall to prevent prowling people from seeing his house and taking pictures. He has also been the subject of a recent television report. Two or three months after the report was aired he was assaulted one night as he was leaving his home by two men and a woman who

beat him into an unconscious “bloody mess.” (Tr. 260, 273-275, 291-292.)

As for his phone call to Gauthier, Respondent said he made the call after he read the news release about APHIS’ complaint against him in the newspaper. He said that since Gauthier had been the person inspecting his facility he assumed Gauthier was responsible for the article being published. He called Gauthier to try to get him to retract the article. When Gauthier replied that he was not responsible, Respondent testified that he told Gauthier that “I suppose I’ll end seeing you in court” but denied making any threat or telling Gauthier that he wished he was dead. (Tr. 268-269.) He testified that he might have said “I wished I was dead,” a statement he had also made in his answer to the complaint. In his brief he added that “All I have are my dogs to make ends meet and they are my life.” As for Joe Ross, he said he had met Ross only on one occasion when his truck had broken down and Ross offered him a ride home. (Tr. 271.)

The shooting incident occurred at the time the television crew was filming Respondent’s facility in the Spring of 1998. Respondent complained to the sheriff’s office but got no response. Gochnauer said he took his shotgun into his driveway and fired it in the air. He said he could not see the television truck because of the weeds when he fired the gun but knew that it was about a quarter mile away. Marshall Smith, who Respondent said was an animal rights’ activist from California who was trying to put him out of business, was with the television crew. Smith filed charges claiming that Respondent had shot at him. The sheriff arrived promptly to arrest Respondent who surrendered peacefully. A jury found that he had unlawfully discharged a firearm and fined him \$25.00. (Tr. 273-274, 291-295, 299-301.)

There is insufficient evidence to find or infer that Ross’ obscene call was due to an association between Ross and Respondent. I do not find that Respondent was responsible for Ross’ harassment and verbal abuse.

It is disputed whether Respondent had threatened Gauthier by saying that he wished Gauthier were dead. Respondent said that if there had been such a reference to death it was to himself, a statement he repeated on other occasions in reference to the possible loss of his dogs.

Black’s Law Dictionary defines a threat as “a communicated intent to inflict harm or loss on another.” *American Jurisprudence* states that “It has been held that implicit in the word threat as it is used in a statute prohibiting threats used to compel action or inaction by another person against his or her will, is the requirement that the expression in its context have a reasonable tendency to create apprehension that its originator will act according to its tenor. The fear which is instilled in the other person must be objectively reasonable.” 31A *Am Jur2d*, Extortion, Blackmail and Threats § 54.

Gauthier’s apprehension caused by Respondent’s alleged threat was undoubtedly exacerbated by Ross’ intimidating call. Gauthier said he was also concerned because Respondent was “unpredictable” and had shot at another

person. Respondent, however, an older person with significant physical handicaps, was not shown to have been responsible for the call by Ross. The record also does not show that he was dangerously unpredictable, or, apart from being cranky, had a history of violence or threatening behavior. He was not found to have shot at anyone. While Gauthier may have been apprehensive, the objective circumstances do not show that Respondent's phone call would raise the degree of fear to constitute a threat of harm. The allegation in the complaint that Respondent interfered with, threatened, verbally abused, and harassed an inspector is dismissed.

Complainant seeks a fine and revocation of Respondent's license. It contends that Respondent is both unable and unwilling to comply with the requirements of the Animal Welfare Act, the regulations, and the standards for the care of animals. Dr. Robert Gibbens, APHIS Regional Director for the Western Region of Animal Care, who was called by Complainant to support its proposed sanction, testified that whether Respondent's facility could come into compliance was a factor he considered. (Tr. 253, 257.)

A troubling aspect of Complainant's position is that, though Respondent's violations at the two inspections in 2000 were extensive, it appears that the inspectors decided even earlier to target Respondent for special action. In 1999, Dr. Jones said that, based on prior inspection reports, Respondent "continued to be out of compliance" and that he did not believe that with Respondent's "history" he could come into compliance. (Tr. 49.) However, except for one minor deficiency, the last inspection before Dr. Jones made this determination, Respondent was in compliance. Similarly, in June 2000, Ledbetter said that Respondent was in chronic noncompliance and that action might be taken against him. He expressed the opinion that Respondent was unwilling to comply. (Tr. 121.) However, again, in the last inspection before Ledbetter made this determination, Respondent was in compliance.

These dubious statements, while not affecting the credibility of the findings of the inspectors, does place in question Complainant's objectivity in recommending license revocation.

For his part, Respondent testified that he has been trying to improve his facility and presented photographs showing that, since the inspections, clutter has been removed from the kennel area. (RX 2, 3, 4, 5, 12 and 13.) Other action he has taken has been to install a fence as Gauthier suggested, retain a veterinarian, and reduce the number of dogs at the facility. He says he intends to get down to around 60 adult dogs. (Tr. 260-268, 276-278, 330.) He had a woman assisting him at the kennel for about six months in 1998 and early in 1999 until she left for another job and had a man, Gary Johnson, working for him for part of the summer in 2000. Johnson testified that he and Respondent tried to correct all the deficiencies identified by the inspectors. (Tr. 306-310, 311-316.) At the time of the hearing Respondent had no one helping him. (Tr.

280.)

The inspection reports until 2000 showed that Respondent, although having recurring violations, had attempted to correct the non-compliant items identified by the inspectors. At the last inspection in 1999 he was in virtual full compliance. (CX 7.) Respondent's testimony is credible that he has tried to correct the deficiencies identified at the inspections in June and August 2000. Whether he was successful or not is unknown since Gauthier said that he had stopped conducting inspections of the facility. Complainant has also in effect taken the position that it is irrelevant whether he is now in compliance since his license should be revoked based on past inspections.

The record indicates that a major reason for Respondent's non-compliance has not been his unwillingness to comply but, rather, as Dr. Slauter and Dr. Jones implied, was due to his physical limitations and the lack of help. Dr. Slauter testified that "the level of management [at the kennel] was not adequate to – for this kennel to be in full compliance." (Tr. 86-87.) Dr. Jones, the supervisor of the inspectors, expressed the opinion that "I do not feel that with 100 dogs, that Mr. Gochnauer can care for these animals in the way that the Animal Welfare Act prescribes people to care for animals." (Tr. 49.) It is noted that when Respondent was last in compliance, in November 1999, he had an employee helping him to maintain the facility.

Section 3.12 of the standards specifically provides that an animal dealer such as Respondent "must have enough employees to carry out the level of husbandry practices and care required in this subpart." This was an obvious deficiency in Respondent's case. Dr. Jones pointed out that Respondent had more dogs than he could handle. Yet, despite the evident lack of sufficient help, Respondent was never cited by an inspector for not complying with section 3.12.

Considering all the circumstances, I do not find that Respondent is unwilling to comply with the Animal Welfare Act and the standards. I do find, however, that he is unable, by himself, to properly care for the large number of dogs he has kept at his facility and that his non-compliance was largely due to not having sufficient help to care for all these animals. While Respondent's recurring incidents of non-compliance, regardless of the reason, may be grounds for revoking his license, I do not find revocation appropriate at this time in view of Complainant's seemingly predetermined intention to take such action against him. I shall therefore order that his license be suspended for twelve months and that he pay a penalty of \$5,000, which shall be suspended provided he uses the money for the maintenance of his facility. As provided by section 2.11 of the regulations, Respondent must demonstrate before his license is restored that he is in compliance with the standards, including a demonstration that he can provide proper care and husbandry for the number of dogs he keeps at his facility.

In the event his request for restoration of license is denied, Respondent may

make application for a hearing as provided by section 2.11(b)² of the regulations to determine why the license should not be denied. Complainant may move at such hearing to have this order modified to provide for license revocation if it shows that Respondent is not in compliance with the standards or this order at the time the application for hearing is made.

Findings of Fact

1. Respondent Mike Gochnauer, an individual, is a dog breeder whose mailing address is 33296 Mesquite, La Plata, Missouri 63549. At all times mentioned in the amended complaint, Respondent was licensed as a dealer under the Animal Welfare Act (AWA License No. 43-A-2364).

2. APHIS conducted inspections of Respondent's premises, animals and records on May 7, June 18, and September 8, 1998, July 27 and November 9, 1999, and on June 22 and August 15, 2000.

3. APHIS attempted to conduct an inspection during business hours on April 15, 1999, but was unsuccessful because of Respondent's absence.

4. On May 7, 1998, Respondent's housing facilities for dogs were not structurally sound and maintained in good repair.

5. On September 8, 1998, Respondent's premises were not kept clean and free of trash, junk, waste, and discarded matter.

6. On July 27, 1999, and June 22, 2000, Respondent's premises were not kept clean and free of trash, junk, waste, and discarded matter.

7. On August 15, 2000, the surfaces of housing facilities at Respondent's facility that come in contact with animals were not free of excessive rust.

8. On May 7 and June 18, 1998, Respondent's housing facilities were not equipped with disposal facilities and drainage systems to rapidly eliminate animal waste and water.

²§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

....

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10;

....

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application.

9. On June 22 and August 15, 2000, dogs in Respondent's outdoor housing facilities were not provided with adequate protection from the elements.

10. On June 22 and August 15, 2000, the building surfaces in contact with the animals in Respondent's outdoor housing facilities for dogs were not impervious to moisture.

11. On May 7, 1998, and August 15, 2000, Respondent's primary enclosures for dogs were not constructed and maintained in good repair so that they have no sharp points or edges.

12. On June 22, 2000, Respondent's primary enclosures for dogs were not structurally sound and maintained in good repair.

13. On June 22 and August 15, 2000, Respondent's primary enclosures for dogs had bare metal wire flooring that was less than 1/8 inch in diameter.

14. On August 15, 2000, Respondent's primary enclosures for dogs were not constructed so that floors protect the animals' feet and legs from injury, and that did not allow their feet to pass through any openings in the floor.

15. On June 22 and August 15, 2000, dogs were not provided sufficient space.

16. On June 22, 2000, food receptacles for dogs were not kept clean and sanitized.

17. On June 22, 2000, water receptacles for dogs were not kept clean and sanitized.

18. On September 8, 1998, July 27, 1999, and June 22, 2000, the premises were not kept clean and free of trash, junk, waste, and discarded matter.

19. On June 22 and August 15, 2000, excreta and food waste were not removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste.

20. On April 15, 1999, Respondent failed to make his facility available for inspection by Animal and Plant Health Inspection Service employees.

21. On July 27, 1999, and June 22 and August 15, 2000, Respondent failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and on August 15, 2000, failed to provide veterinary care to animals in need of care.

22. On July 27, 1999, and August 15, 2000, Respondent failed to individually identify dogs.

Conclusions of Law

Respondent violated the Animal Welfare Act, 7 U.S.C. § 2131 *et seq.*, the regulations, 9 C.F.R. § 2.1 *et seq.*, and the standards issued under the Act, 9 C.F.R. § 3.1 *et seq.*, as follows:

1. On May 7, 1998, Respondent's housing facilities for dogs were not

structurally sound and maintained in good repair so as to protect the animals from injury. (9 C.F.R. § 3.1(a).)

2. On September 8, 1998, Respondent's premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.1(b).)

3. On July 27, 1999, Respondent's premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.1(b).)

4. On June 22, 2000, Respondent's premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.1(b).)

5. On August 15, 2000, the surfaces of housing facilities at Respondent's facility that come in contact with animals were not free of excessive rust that prevents the required cleaning and sanitation. (9 C.F.R. § 3.1(c)(1)(i).)

6. On May 7, 1998, Respondent's housing facilities were not equipped with disposal facilities and drainage systems that are constructed and maintained so that animal waste and water are rapidly eliminated. (9 C.F.R. § 3.1(f).)

7. On June 18, 1998, Respondent's housing facilities were not equipped with disposal facilities and drainage systems that are constructed and maintained so that animal waste and water are rapidly eliminated. (9 C.F.R. § 3.1(f).)

8. On June 18, 1998, Respondent's housing facilities were not equipped with disposal facilities and drainage systems that are constructed and maintained so that animal waste and water are rapidly eliminated. (9 C.F.R. § 3.1(f).)

9. On June 22, 2000, dogs in Respondent's outdoor housing facilities were not provided with adequate protection from the elements. (9 C.F.R. § 3.4(b).)

10. On June 22, 2000, the building surfaces in contact with the animals in Respondent's outdoor housing facilities for dogs were not impervious to moisture. (9 C.F.R. § 3.4(c).)

11. On August 15, 2000, dogs in Respondent's outdoor housing facilities were not provided with adequate protection from the elements. (9 C.F.R. § 3.4(b).)

12. On August 15, 2000, the building surfaces in contact with the animals in Respondent's outdoor housing facilities for dogs were not impervious to moisture. (9 C.F.R. § 3.4(c).)

13. On May 7, 1998, Respondent's primary enclosures for dogs were not constructed and maintained in good repair so that they have no sharp points or edges that could injure the animals. (9 C.F.R. § 3.6(a)(2)(i) and (ii).)

14. On June 22, 2000, Respondent's primary enclosures for dogs were not structurally sound and maintained in good repair. (9 C.F.R. § 3.6(a)(1).)

15. On June 22, 2000, Respondent's primary enclosures for dogs had bare metal wire flooring that was less than 1/8 inch in diameter. (9 C.F.R. § 3.6(a)(2)(xii).)

16. On August 15, 2000, Respondent's primary enclosures for dogs were not constructed and maintained in good repair so that they have no sharp points or edges that could injure the animals. (9 C.F.R. § 3.6(a)(2)(i).)

17. On August 15, 2000, Respondent's primary enclosures for dogs were not constructed so that the floors protect the animals' feet and legs from injury, and that do not allow their feet to past through any openings in the floor. (9 C.F.R. § 3.6(a)(2)(x).)

18. On August 15, 2000, Respondent's primary enclosures for dogs had bare metal wire flooring that was less than 1/8 inch in diameter. (9 C.F.R. § 3.6(a)(2)(xii).)

19. On June 22, 2000, dogs were not provided sufficient space, as required. (9 C.F.R. § 3.6(c)(1).)

20. On August 15, 2000, dogs were not provided sufficient space, as required. (9 C.F.R. § 3.6(c)(1).)

21. On June 22, 2000, food receptacles for dogs were not kept clean and sanitized as required. (9 C.F.R. § 3.9(b).)

22. On June 22, 2000, water receptacles for dogs were not kept clean and sanitized as required. (9 C.F.R. § 3.10(b).)

23. On September 8, 1998, the premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.11(c).)

24. On July 27, 1999, the premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.11(c).)

25. On June 22, 2000, the premises were not kept clean and free of trash, junk, waste, and discarded matter, in order to protect the animals from injury and facilitate the required husbandry practices. (9 C.F.R. § 3.11(c).)

26. On June 22, 2000, food and water receptacles for dogs were not kept clean and sanitized as required. (9 C.F.R. § 3.11(b)(2).)

27. On June 22, 2000, excreta and food waste were not removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors. (9 C.F.R. § 3.11(a).)

28. On August 15, 2000, excreta and food waste were not removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs and to reduce disease hazards, insects, pests, and odors. (9 C.F.R. § 3.11(a).)

29. On April 15, 1999, the Respondent failed to make his facility available for inspection by Animal and Plant Health Inspection Service employees in violation of section 2.126 of the regulations. (9 C.F.R. § 2.126.)

30. On June 22, 2000, Respondent failed to maintain programs of disease control and prevention under the supervision and assistance of a doctor of veterinary medicine, in wilful violation of section 2.40 of the regulations. (9 C.F.R. § 2.40).)

31. On August 15, 2000, Respondent failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in wilful violation of section 2.40 of the regulations. (9 C.F.R. § 2.40).)

32. On July 27, 1999, Respondent failed to individually identify dogs, in wilful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50 of the regulations. (9 C.F.R. § 2.50).)

33. On August 15, 2000, Respondent failed to individually identify dogs, in wilful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50 of the regulations. (9 C.F.R. § 2.50).)

Amended Order

1. The license issued to Respondent under the Animal Welfare Act (No. 43- A- 2364) is hereby revoked.

2. Respondent, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards thereunder.

The parties have waived their right to appeal this Decision and Amended Order under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145), and this Decision and Amended Order shall become final and effective without further proceedings on September 1, 2001.

[This Decision and Order became final and effective September 1, 2001.-
Editor]
